

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v. -

JOSEPH PERCOCO, a/k/a “Herb,”
ALAIN KALOYEROS, a/k/a “Dr. K.,”
PETER GALBRAITH KELLY, JR., a/k/a “Braith,”
STEVEN AIELLO,
JOSEPH GERARDI,
LOUIS CIMINELLI,
MICHAEL LAIPPLE, and
KEVIN SCHULER,

Defendants.

No. S1 16 Cr. 776 (VEC)

DECLARATION OF DANIEL M. GITNER

I, DANIEL M. GITNER, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a member of the bar of this Court and a partner at Lankler Siffert & Wohl, LLP (“LSW”), attorneys for Peter Galbraith Kelly, Jr., a defendant in the above-captioned matter. I make this declaration in support of Mr. Kelly’s pretrial motions, including his motions for severance, to strike prejudicial surplusage, for a bill of particulars, and for Brady disclosures.

2. Attached hereto as **Exhibit A** is a chart, prepared by defense counsel, showing which defendants are charged in which counts and in relation to which schemes (the “Chart”). The Chart differs from the version originally presented to the Court during the status conference held on April 6, 2017, insofar as the original version depicted the charges contained in the original Indictment, while this version depicts the charges contained in the S1 Indictment. The

general format of the Chart remains the same: the left-hand column lists the 15 counts in the S1 Indictment, while the top row lists the eight defendants.

3. Attached hereto as **Exhibit B** is a true and correct copy of the S1 Indictment, dated May 11, 2017.

4. Attached hereto as **Exhibit C** is a true and correct copy of the original Indictment, dated November 22, 2016.

5. Attached hereto as **Exhibit D** is a true and correct copy of the Complaint, dated September 20, 2016.

6. Attached hereto as **Exhibit E** is a true and correct copy of a letter that I sent on Mr. Kelly's behalf to the Government on January 25, 2017, requesting Brady material. Specifically, the letter sought material relating to lies told to Mr. Kelly by the Government's cooperating witness, Todd Howe, and document alterations made by Howe.

7. Attached hereto as **Exhibit F** is a true and correct copy of a letter the Government sent to me on February 6, 2017, responding to my letter, Exhibit E.

8. Attached hereto as **Exhibit G** is a true and correct copy of a letter I sent on Mr. Kelly's behalf to the Government on February 16, 2017, again requesting Brady material relating to lies told to Mr. Kelly by Howe, and document alterations made by Howe.

9. Attached hereto as **Exhibit H** is a true and correct copy of a letter I sent on Mr. Kelly's behalf to the Government on February 28, 2017, requesting a bill of particulars.

10. Attached hereto as **Exhibit I** is a true and correct copy of a letter the Government sent to me on March 23, 2017, responding to Mr. Kelly's second request for Brady material relating to Howe.

11. Attached hereto as **Exhibit J** is a true and correct copy of the transcript of the April 6, 2017, status conference.

12. Attached hereto as **Exhibit K** is a true and correct copy of a letter the Government sent to me on April 10, 2017, in response to Mr. Kelly's request for a bill of particulars.

13. Attached hereto as **Exhibit L** is a true and correct copy of a letter I sent on Mr. Kelly's behalf to the Government on April 11, 2017, requesting additional Brady material. This request called for certain material relating to an ethics opinion mentioned in both the Complaint and the S1 Indictment.

14. Attached hereto as **Exhibit M** is a true and correct copy of a letter I sent on Mr. Kelly's behalf to the Government on April 17, 2017, requesting additional Brady material. This letter requested any material that would undermine Count Nine of the original Indictment, which charged Mr. Kelly together in a single conspiracy with co-defendants Steven Aiello and Joseph Gerardi ("the Syracuse Defendants").

15. Attached hereto as **Exhibit N** is a true and correct copy of a letter I sent on Mr. Kelly's behalf to the Government on April 25, 2017, requesting additional Brady material. This letter requested any material that would undermine the Government's allegation that defendant Joseph Percoco "pressured or advised" other New York State officials to commit official acts to benefit Mr. Kelly's employer.

16. Attached hereto as **Exhibit O** is a true and correct copy of a letter the Government sent to me on April 26, 2017, responding to Mr. Kelly's requests for Brady material regarding (1) the ethics opinion, (2) Count Nine as it was charged in the original Indictment, and (3) Percoco's pressure on or advice to other state officials.

17. Attached hereto as **Exhibit P** is a true and correct copy of a letter I sent on Mr. Kelly's behalf to the Government on April 28, 2017, reiterating and further explaining Mr. Kelly's earlier requests for **Brady** material.

18. Attached hereto as **Exhibit Q** is a true and correct copy of a letter I sent on Mr. Kelly's behalf to the Government on May 2, 2017, supplementing Mr. Kelly's bill of particulars request to cover the wire transmissions the Government intends to rely on to prove the honest services fraud conspiracy count.

19. Attached hereto as **Exhibit R** is a true and correct copy of a letter the Government sent to me on May 5, 2017, responding to Mr. Kelly's various requests for **Brady** material.

20. Attached hereto as **Exhibit S** is a true and correct copy of a letter the Government sent to me on May 10, 2017, responding to Mr. Kelly's supplemental request for a bill of particulars with respect to the wire transmissions on which the Government intends to rely.

21. Attached hereto as **Exhibit T** is a true and correct copy of the Government's discovery index, dated May 18, 2017.

22. Attached hereto as **Exhibit U** is a separate affidavit describing a telephonic "meet-and-confer" conducted with the Government and other defense counsel on May 12, 2017, concerning various requests for **Brady** materials and bills of particulars.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 19, 2017



DANIEL M. GITNER

Lankler Siffert & Wohl LLP
500 Fifth Avenue, 34th Floor
New York, NY 10110-3398
(212) 921-8399

Attorney for Peter Galbraith Kelly, Jr.